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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

CC Docket 196-98  


In the matter of )  
 )  
 Request of Association for Local ) CCB/CPD 97-30  
 Telecommunications Services for )  
 Clarification of the Commission's Rules )  
 Regarding Reciprocal Compensation for )  
 Information Service Provider Traffic )

**Reply Comments of GTE Service Corporation**

GTE Service Corporation and its affiliated companies<sup>1</sup> (collectively, "GTE"), pursuant to the Public Notice<sup>2</sup> issued by the Commission on July 2, 1997, hereby submits its Reply Comments opposing the Association for Local Telecommunications Services ("ALTS") request<sup>3</sup> for a ruling that calls to Internet service providers ("ISPs") are subject to mutual compensation under Section 252 of the Telecommunication Act of 1996.

<sup>1</sup> These companies include: GTE Alaska Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., and Contel of the South, Inc., GTE Mobilnet Incorporated, Contel Cellular Inc., GTE Airfone Incorporated, GTE Card Services Incorporated, d/b/a GTE Long Distance.

<sup>2</sup> *Public Notice*, DA 97-1399, "Pleading Cycle Established for Comments on Request by ALTS for Clarification of Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic," rel. July 2, 1997.

<sup>3</sup> Letter from Richard J. Metzger, ALTS, to Regina M. Keeney, Chief, Common Carrier Bureau, FCC (June 20, 1997) ("ALTS Letter").

2

## I. INTRODUCTION

GTE has a strong commitment to the use and development of the Internet. As a local exchange carrier ("LEC"), a competitive local exchange carrier ("CLEC"), an ISP, and a wholesaler of Internet access service, GTE is uniquely well situated to address the issues raised in the ALTS Letter. The Internet is a powerful tool for communications, which allows millions of people around the world to interact in a number of novel ways. Its potential to change and improve the way people communicate is almost boundless. GTE understands that resolving the issue of reciprocal compensation as it relates to Internet traffic is critically important to many different segments of the telecommunications industry. Therefore, the Commission needs to implement a comprehensive policy governing ISP traffic that promotes the development of the Internet and recognizes the burden that this development might impose on others.

GTE respectfully urges the Commission to reject the ALTS Letter's request for an expedited letter clarification. As demonstrated by the comments of the United States Telephone Association ("USTA Comments") and others, Internet traffic is jurisdictionally interstate. This jurisdictional status undermines the ALTS Letter's rationale for seeking expedited clarification on reciprocal compensation obligations.<sup>4</sup> Therefore, the Commission should address this issue in the Access Reform NOI proceeding where it can fully develop a record on this complex and critical question.

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<sup>4</sup> Moreover, the extent of reciprocal compensation requirements for local traffic under Sections 251 and 252 are a matter for state, not FCC, resolution. *See Iowa Utilities Board v. FCC*, 1997 WL 403401, \* 9 (8<sup>th</sup> Cir.).

## **II. INTERNET TRAFFIC IS INDISPUTABLY INTERSTATE**

As USTA and others demonstrated in the initial round of comments in this proceeding, Internet traffic is clearly jurisdictionally interstate. This is consistent with a long line of Commission cases dealing with the jurisdictional status of various types of communications and with the Commission's historical exemption of enhanced services traffic from access charges. Notwithstanding the claims of certain commenters,<sup>5</sup> the Commission's granting of this exemption demonstrates the agency's recognition of the interstate nature of ISP traffic.<sup>6</sup> Because federal access charges apply only to interstate access traffic,<sup>7</sup> the need for an

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<sup>5</sup> Comments of Teleport Communications Group Inc., CCB/CPD 97-30 at 2 (filed July 17, 1997) ("Teleport Comments"); Comments of American Communications Services, Inc., CCB/CPD 97-30 at 4-5 (filed July 17, 1997) ("ACS Comments"); Comments of ACC Corp., CCB/CPD 97-30 at 5, n. 3 (filed July 17, 1997) ("ACC Comments"); Comments of Focal Communications, Inc., CCB/CPD 97-30 at 5 (filed July 17, 1997) ("Focal Comments"); Comments of US Xchange, L.L.C., CCB/CPD 97-30 at 4-5 (filed July 17, 1997) ("Xchange Comments"); Comments of Brooks Fiber Properties, Inc., CCB/CPD 97-30 at 5 (filed July 17, 1997) ("Brooks Fiber Comments"); Comments of XCOM Technologies, Inc., CCB/CPD 97-30 at 4 (filed July 17, 1997) ("XCOM Comments"); Intermedia Communications Inc. Comments in Support of ALTS Request for Letter Ruling, CCB/CPD 97-30 at 4 (filed July 17, 1997) ("Intermedia Comments"); Comments of GST Telecom, Inc. in Support of the ALTS Request for Expedited Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic, CCB/CPD 97-30 at 3-4 (filed July 17, 1997) ("GST Comments"); Comments of WorldCom, Inc., CCB/CPD 97-30 at 6 (filed July 17, 1997) ("WorldCom Comments"); Comments of Winstar Communications, Inc., CCB/CPD 97-30 at 4 (filed July 17, 1997) ("Winstar Comments"); Comments of Hyperion Telecommunications, Inc. in Support of Request by ALTS for Expedited Clarification of the Commission's Rules regarding Reciprocal Compensation for Information Service Provider Traffic, CCB/CPD 97-30 at 6 (filed July 17, 1997) ("Hyperion Comments").

<sup>6</sup> Comments of the United States Telephone Association and Member Companies, CCB/CPD 97-30 at 3 (filed July 17, 1997); Ameritech Comments, CCB/CPD 97-30 at 4-7 (filed July 17, 1997).

<sup>7</sup> See 47 C.F.R. Part 69.

exemption is conclusive proof that the Commission considers Internet traffic to be jurisdictionally interstate.

Although various CLEC commentators contend that in granting this exception the Commission found that Internet traffic is local and that ISPs are “end users,”<sup>8</sup> the agency stated only that “enhanced service providers are *treated* as end users for purposes of applying access charges.”<sup>9</sup> In determining that ISPs are *treated* as end users “for purposes of applying access charges,” the Commission merely decided that a certain class of interstate traffic should be exempted from access charges for policy reasons. This is a far cry from determining that Internet traffic -- which may transit the globe -- is jurisdictionally local.

Other CLECs attempt to further muddy the waters by asserting that the *Non-Accounting Safeguards Order*, the *Universal Service Order*, or various provisions of the Telecommunications Act of 1996 support their characterization of Internet traffic as jurisdictionally local.<sup>10</sup> These parties confuse the physical location of facilities and the characteristics of particular services with the jurisdictional status of the communications traffic that transits those facilities and services. They also rely on the discredited “two call”

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<sup>8</sup> Teleport Comments at 2; ACS Comments at 4-5; ACC Comments at 5, n. 3; Focal Comments at 5; Xchange Comments at 4-5; Brooks Fiber Comments at 5; XCOM Comments at 4; Intermedia Comments at 4; GST Comments at 3-4; WorldCom Comments at 6; Winstar Comments at 4; Hyperion Comments at 6.

<sup>9</sup> *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, 3 FCC Rcd 2631 at n. 8 (1988) (“ESP Exemption Order”) (emphasis added).

<sup>10</sup> Teleport Comments at 4-5; Focal Comments at 5-7; Xchange Comments at 4-5; Brooks Fiber Comments at 5-7; XCOM Comments at 4-5; WorldCom Comments at 8-9; Winstar Comments at 3-5; Hyperion Comments at 6-7; Comments of RCN Telecom Services, Inc., CCB/CPD 97-30 at 5-8 (filed July 17, 1997) (“RCN Comments”).

jurisdictional analysis that the Commission has consistently rejected, most recently in the *MemoryCall*<sup>11</sup> decision.

Simply put, a communication which (1) originates with an Internet subscriber, (2) transits the local exchange to an ISP, and (3) is then re-routed to the "Internet" to permit the subscriber to obtain information from, and communicate with, computer servers and individuals throughout the globe is unquestionably interstate. No attempt at obfuscation through the mangling of unrelated telecommunications concepts and Commission proceedings, whether intentional or otherwise, can challenge this basic fact. Notably, even ISP commentators do not dispute that Internet traffic is jurisdictionally interstate.

Accordingly, the Access Reform Notice of Inquiry ("Access Reform NOI") is the appropriate proceeding for comprehensively addressing cost recovery for the transmission of Internet traffic by ILECs and CLECs. As discussed in GTE's comments in that proceeding,<sup>12</sup> resolving the question of the jurisdictional classification of Internet traffic, along with the host of other complex and critical issues involved in the Access Reform NOI, requires a full record and in depth consideration that can be made available only in that proceeding.

In particular, the NOI provides the appropriate forum for addressing the public interest in promoting the development of the emerging Internet industry together with CLECs' concerns that they be compensated for the costs they incur in terminating Internet traffic and

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<sup>11</sup> *Petition for Emergency and Declaratory Ruling Filed by BellSouth Corporation*, 7 FCC Rcd 1619 (1992), *aff'd Georgia Public Service Commission v. FCC*, 5 F.3d 1499 (11<sup>th</sup> Cir. 1993). *See also AT&T Communications Revisions to Tariff FCC No. 2 (800 ReadyLine Service)*, 2 FCC Rcd 78 (1986); *Teleconnect Company v. Bell Telephone Company of Pennsylvania*, 10 FCC Rcd 1626 (1995).

<sup>12</sup> Comments of GTE, CC Docket No. 96-263 (filed March 25, 1997).

ILECs' similar concerns that existing compensation arrangements do not permit recovery of the costs associated with the increased call volume that characterizes Internet traffic. The existence of these related issues demonstrates why addressing Internet traffic issues in a complete and coordinated manner is essential. Only by including the ALTS request among the many issues to be addressed in the Access Reform NOI can Commission policy governing Internet traffic be developed on a uniform and comprehensive basis.

### **III. BUSINESS TELECOM, INC. INCORRECTLY CHARACTERIZES ITS NEGOTIATIONS WITH GTE**

In its comments, Business Telecom, Inc. ("BTI") claims that "GTE's effort to effectively exclude companies . . . from entering the market is made glaringly obvious by comparing the [reciprocal compensation] terms it is insisting on from [BTI] to the contemporaneous terms it has agreed to with U S West and Pacific Bell."<sup>13</sup> BTI suggests that, because GTE has insisted that Internet traffic exchanged with BTI in North Carolina should not be subject to reciprocal compensation even though GTE's interconnection agreement with U S West in Minnesota does not contain such an express exclusion, GTE has somehow engaged in "bad faith negotiations" with BTI.<sup>14</sup> BTI's complaint is wholly misplaced and fails to appropriately consider much less correctly describe the regulatory requirements in either North Carolina or Minnesota.<sup>15</sup>

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<sup>13</sup> Comments of Business Telecom, Inc., CCB/CPD 97-30 at 3 (filed July 17, 1997).

<sup>14</sup> *Id.* at 3-4.

<sup>15</sup> BTI's faulty allegations strikingly illustrate the futility of attempting to adjudicate discrimination complaints in an expedited declaratory ruling proceeding.

In North Carolina, GTE's interconnection agreement with BellSouth contains a reciprocal compensation provision that is identical to that it has proposed to BTI, with regards to the issues raised in the ALTS Letter. It is this North Carolina agreement, and not the Minnesota U S West agreement, that would be relevant to any claim of bad faith BTI might bring before the North Carolina commission, if it so chooses.<sup>16</sup> Moreover, the GTE-U S West agreement in Minnesota reflects the explicit requirements of the Minnesota commission with respect to reciprocal compensation, which were described by several commentators.<sup>17</sup> It follows that BTI's discrimination claims are factually inaccurate, involve invalid comparisons and are irrelevant to the proper disposition of the ALTS request. GTE has not discriminated in favor of U S West, but simply has reflected the explicit compensation requirements of the Minnesota commission in its agreement.

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<sup>16</sup> Under the Eighth Circuit's decision, the Commission lacks jurisdiction to deal with BTI's complaint. Under Section 208, 47 U.S.C. § 208 (1995), or otherwise. *Iowa Utilities Board v. FCC*, 1997 WL 403401 at \* 13-15 (8<sup>th</sup> Cir. 1997).

<sup>17</sup>The Minnesota Public Utilities Commission specifically requires reciprocal compensation for enhanced service provider traffic. Consolidated Petitions of AT&T Communications of the Midwest, Inc., MCImetro Access Transmission Services, Inc., and MFS Communications Company for Arbitration with US WEST Communications, Inc., Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996, Order Resolving Arbitration Issues, Doc. Nos. P-442, 421/M-96-855, P-5321, 421/M-96-909, P-3167, 421/M-96-729 (Minn. PUC Dec. 2, 1996). See, Comments of KMC Telecom, Inc. in Support of Request by ALTS for Classification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic, CCB/CPD 97-30 at 7 (filed July 17, 1997); Comments of US Xchange, L.L.C., CCB/CPD 97-30 at 8 (filed July 17, 1997).

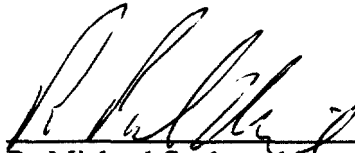
#### IV. CONCLUSION

The Commission should confirm the interstate nature of Internet traffic and address the question of appropriate compensation for CLECs and ILECs carrying Internet traffic in the Access Reform NOI.

Respectfully submitted,  
GTE SERVICE CORPORATION  
and its affiliated companies

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July 31, 1997

  
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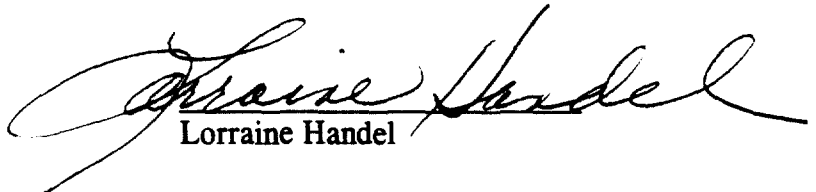
I hereby certify that on this 31<sup>th</sup> day of July, 1997, I caused copies of the foregoing

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